

5
1 WALTER WILHELM LAW GROUP
2 A Professional Corporation
3 Riley C. Walter #91839
4 Matthew P. Bunting #306034
5 Danielle J. Bethel #315945
6 205 East River Park Circle, Ste. 410
7 Fresno, CA 93720
8 Telephone: (559) 435-9800
9 Facsimile: (559) 435-9868
10 E-mail: rileywalter@w2lg.com

11 Chapter 9 Counsel

12 MCCORMICK BARSTOW, LLP
13 Timothy L. Thompson #133537
14 Mandy L. Jeffcoach #232313
15 Nikole E. Cunningham #277976
16 7647 N. Fresno Street
17 Fresno, CA 93720
18 Telephone: (559) 433-1300
19 Facsimile: (559) 433-2300
20 E-mail: mandy.jeffcoach@mccormickbarstow.com

21 District Counsel

22 IN THE UNITED STATES BANKRUPTCY COURT
23 EASTERN DISTRICT OF CALIFORNIA
24 FRESNO DIVISION

25 In re

26 CASE NO. 17-13797

27 TULARE LOCAL HEALTHCARE
28 DISTRICT, dba TULARE
REGIONAL MEDICAL CENTER,

29 DC No.: RDC-1

30 Chapter 9

31 Debtor.

32 Date: November 1, 2017

33 Time: 9:30 a.m.

34 Place: 2500 Tulare Street
35 Fresno, CA 93721
36 Courtroom 13
37 Dept. B, Fifth Floor

38 Judge: Honorable René Lastreto II

39 OPPOSITION TO CREDITOR JIAME CALDERON'S MOTION FOR
40 RELIEF FROM AUTOMATIC STAY

41 TO THE HONORABLE RENÉ LASTRETO II, UNITED STATES BANKRUPTCY

42 JUDGE:

1 TULARE REGIONAL HEALTHCARE DISTRICT, dba TULARE REGIONAL
2 MEDICAL CENTER ("TRMC") respectfully comes before the Court in opposition to the
3 Motion filed by Jiame Calderon and The Three Minor Children of Jiame Calderon and
4 Ana Calderon requesting relief from the automatic stay ("Motion") as follows:

5 I.

6 **BACKGROUND**

7 1. TRMC filed a voluntary Chapter 9 case on September 30, 2017 (the
8 "Petition Date").

9 2. Prior to the Petition Date, TRMC was named as a defendant in the
10 following lawsuit: *Jiame Calderon v. Adanna Ikedilo, M.D., Tulare Regional Medical*
11 *Center, et al., U.S. District Court, Eastern District of California, Fresno Division, Case*
12 *No. 1:17-cv-00040* (the "Lawsuit"). The Lawsuit was pending as of the Petition Date
13 with a trial date scheduled for October of 2018.

14 3. By the Lawsuit, Jiame Calderon and the three children of Jiame Calderon
15 and Ana Calderon (deceased) (collectively, "Creditor") seek damages from TRMC for
16 the tort of negligence resulting in wrongful death.

17 4. Creditor now seeks an order from this Court for relief from the automatic
18 stay so that it can pursue the Lawsuit against TRMC.

19 II.

20 **THE STAY APPLIES TO THE LAWSUIT**

21 11 U.S.C. § 362 provides for an automatic stay upon the filing of a bankruptcy
22 petition under any chapter of the Bankruptcy Code. Further, Collier provides that
23 Section 362 provides for a broad stay of litigation, lien enforcement and other actions,
24
25 ///

1 judicial or otherwise, that are attempts to enforce or collect prepetition claims.

2 Creditor's Lawsuit is an attempt to determine the underlying liability of TRMC as to a
3 wrongful death tort claim which arose prior to the filing of the bankruptcy case. The
4 automatic stay applies.

5 **III.**

6 **STANDARDS FOR RELIEF FROM STAY**

7 11 U.S.C. § 362(d) provides for circumstances under which this Court
8 may terminate, annul, modify, or condition the automatic stay. 11 U.S.C. § 362(d)(1)
9 and (2) provide:

10 " (d) On request of a party in interest and after notice and a hearing, the
11 court shall grant relief from the stay provided under subsection (a) of this
12 section, such as by terminating, annulling, modifying or conditioning such
13 stay -

- 14 (1) for cause, including the lack of adequate protection of an
15 interest in property of such party in interest; or
- 16 (2) with respect to a stay of an act against property under
17 subsection (a) of this section, if -
 - 18 (A) the debtor does not have an equity in such
19 property; and
 - 20 (B) such property is not necessary to an effective
21 reorganization."

22 **IV.**

23 **THE BURDEN TO SHOW CAUSE IS ON CREDITOR**

24 Creditor has the burden to show that cause exists. To obtain relief from the
25 automatic stay, the movant must first establish a *prima facie* case that "cause" exists
26 for the relief under Section 362(d)(1). See *In re Duvar Apt., Inc.*, 205 B.R. 196, 200 (9th
27 Cir. BAP 1996). Once a *prima facie* case has been established, the burden shifts to
28 the debtor to show that relief from the stay is unwarranted. See 11 U.S.C. 362(g)(2); *In
re Sonnax Indus. Inc.*, 907 F.2d 1280, 1285 (2d Cir. 1990).

29 ///

30 ///

31 ///

V.

CREDITOR FAILS TO STATE GROUNDS FOR CAUSE

The Bankruptcy Code does not define what constitutes “cause.” Rather, “cause is determined on a case-by-case basis.” *Christensen v. Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990). Although Creditor’s Motion correctly cites 11 U.S.C. § 362(d) and states that “cause” is required, Creditor offers no facts or law establishing that “cause” in fact exists.

8 Creditor has not established that "cause" exists. Creditor cites 28 U.S.C.
9 157(b)(1), (b)(2)(B), (b)(2)(O), and (b)(5) as grounds for relief. However, each of these
10 code sections is inapplicable here as each has only to do with procedural issues
11 involving whether or not the bankruptcy court may hear and determine a particular case
12 involving personal injury and/or wrongful death. The "core" issue here that the Court is
13 being asked to decide is whether or not relief from the stay is warranted, not whether or
14 not TRMC is liable to Creditor on the Lawsuit.

vi.

DEBTOR WILL BE PREJUDICED IF RELIEF IS GRANTED

17 The relief requested is premature, in any event. TRMC is currently involved in a
18 struggle for control of its own finances with its management company, Healthcare
19 Conglomerate Associates, LLC ("HCCA"). TRMC's struggles with HCCA have been the
20 subject of numerous pleadings filed with this Court and will not be restated here.

21 TRMC is a participating member of a risk management joint powers authority
22 ("JPA"). This means that TRMC self-insures its liability claims and losses by pooling
23 risks among similar healthcare facilities. The JPA that TRMC is a member of is called
24 BETA Risk Management Authority ("BETA"). The JPA is subject to a \$100,000
25 deductible which makes the first \$100,000 of any award or settlement TRMC's
26 responsibility.

27 | //

28 | //

1 BETA has indicated that HCCA has not tendered TRMC's monthly contract
2 payments for September or October and that if payment is not made soon it will seek
3 termination of TRMC's membership and contribution on any claims such as Creditor's,
4 leaving no available indemnity.

5 Until the contract with BETA is brought current and assumed there is no
6 certainty that there will be any source of payment other than TRMC's assets.
7 Consequently, although TRMC recognizes that courts have held that cause exists to lift
8 the stay where the debtor-defendant will not be prejudiced because plaintiffs seek only
9 to recover as to insurance proceeds¹, this is not the case here for the reasons
10 mentioned above.

VIII. CONCLUSION

WHEREFORE, because Creditor has not established a *prima facie* case that cause exists for relief to be granted, and because should Creditor obtain a judgment there is no certainty of any source of payment other than TRMC's assets, the Motion should be denied without prejudice.

Dated: October 27, 2017

WALTER WILHELM LAW GROUP,
a Professional Corporation

~~Bv:~~

Danielle J. Bethel
Attorneys for the Debtor
Tulare Local Healthcare District, dba Tulare
Regional Medical Center

¹*In re Fernstrom Storage and Van Co.*, 938 F.2d 731 (7th Cir. 1991). See also *In re Borbridge*, 81 B.R. 332 (E.D. Pa. 1988) (noting that “[t]he easiest ground for determining that ‘cause exists in favor of an unsecured creditor is when the creditor seeks to recover from nonestate property, such as an insurance or indemnity agreement.”)